IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12754 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHURSINH SHIVSINH BARAD

Versus

DISTRICT MAGISTRATE

Appearance:

MR SHAKTISINH GOHIL for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 14/05/2001

ORAL JUDGEMENT

1. The detenue Shambhusinh Shivsinh Barad was detained under PASA on 16-10-2000 in pursuance of the order passed by the detaining authority dated 12-10-2000. The brother of the detenue filed this petition

challenging the order of detention passed by the detaining authority dated 12-10-2000. The detenue has been detained on the ground that there are six pending cases against the detenue, for committing offences under the Prohibition act. On the grounds of detention it is alleged that, unless the detenue is detained under PASA he will continue his activities in bootlegging. The detaining authority after going through the grounds of detention satisfied that, there is an apprehension of indulging in bootlegging if the detenue Shambhusinh Shivsinh Barad is not detained under PASA.

2. The detention of the detenue has been challenged mainly on two grounds as argued by learned counsel for the petitioner Mr. Shaktisinh Gohil. It is submitted that the detaining authority did not call for the witnesses whose statements have been recorded by the police. It is submitted by Mr. Shaktisinh Gohil that, it was incumbent on the part of the detaining authority to verify the statement of the witnesses as supplied by the police on the grounds of detention. I do not find any force in the submission of learned counsel for the petitioner, because if the detaining authority is satisfied on the grounds of detention, then , no further inquiry is required to be made. However, if the detaining authority has any doubt about the statement of the witnesses or he needs any clarification from the police, which the police is under an obligation to supply to the detaining authority. If the detaining authority is satisfied after perusing the grounds of detention that a particular person is required to be detained for maintaining public order then no further inquiry is necessary. Therefore the first ground raised by learned counsel for the detenue do not have any force.

3. The second ground agitated by learned counsel for the petitioner is that, as per provisions of Section 11 of the Gujarat Prevention of Anti Social Activities Act, 1985, the State Government is under an obligation to place before the Advisory Board the representation if any filed by the detenue, the grounds of detention on which the detention order has been passed and also the representation made to the State Government. It is submitted that, under section 9 of the Act the petitioner has a right to make representation to the State Government against the order of detention and even if such a representation is decided by the State Government, the State Government is under an obligation according to provisions of section 11 of the PASA to place the same before the Advisory Board. Learned AGP Mr. H.L. Jani placed before me the original record. It is fairly

submitted by learned AGP that the representation made by the detention to the State Government was not placed before the Advisory Board. It is requirement of law that the representation made by the detenue to the State Government shall have to be placed before the Advisory Committee. Therefore I am of the view that the provisions of section 11 has not been complied with in the present case, and therefore the detenue is required to be released. Accordingly the order of detention dated 12-10-2000 passed by learned District Magistrate, Banaskantha is hereby quashed. The detenue Shambhusinh Shivsinh Barad is hereby ordered to be released forthwith, if he is not to be detained in any other case.

4. It is submitted by learned counsel for the detenue that the detenue is at present on parole, and therefore after the period of Parole, the detenue is not required to be reported back to the jail authority in connection with the present case. The petition is accordingly disposed of as allowed. Rule made absolute. Direct service permitted.

Dt: 14-5-2001 (P.K. Sarkar, J)

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